

OGC Has Reviewed

Approved For Release 2001/09/03 : CIA-RDP84-00709R000400070120-9

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Chief, [REDACTED]

Office of the General Counsel

Public Law 800 § 8

15 April 1948

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1. Reference is made to your memorandum of 15 March 1948, requesting interpretation and clarification of Section 8 of the Act of August 2, 1946, 80 Stat. 808 (Public Law 800) in the light of certain [REDACTED] practices relating to the sale or exchange of various non-expendable items of equipment.

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2. You state (a) that it has been the practice of [REDACTED] specifically with respect to automobiles, to accumulate the proceeds from the sale of autos and charge the entire costs of purchase to the fund to the extent that gross proceeds of all sales exceed the cost of all purchases; (b) that because of administrative difficulty and expenses in interzone transfers, specific sales and specific purchases have not been tied in; (c) that it is felt that one new car may replace in cost and efficiency more than one old car and that it cannot be presently determined that more than one old car was disposed of for the purpose of acquiring one new car; and (d) that at the end of the fiscal year, any net balance remaining in the fund indicating an excess of proceeds from sales over cost of purchases will be covered into the United States Treasury as a miscellaneous receipt.

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3. Section 8 of Public Law 800 provides as follows:

"In purchasing motor-propelled or animal-drawn vehicles or tractors, or road, agricultural, manufacturing, or laboratory equipment, or boats, or parts, accessories, tires, or equipment thereof, or any other article or item the exchange of which is authorized by law, the head of any department or his duly authorized representative may exchange or sell similar items and apply the exchange allowances or proceeds of sales in such cases in whole or in part payment therefor: PROVIDED, That any transaction carried out under the authority of this section shall be evidenced in writing."

4. In 27 Comp. Gen. 30 it was held, quoting from the syllabus:

"Under Section 8 of the administrative expense statute of August 2, 1946, authorizing application of the proceeds of sale or the exchange allowance of used vehicles, etc., toward the purchase of new similar equipment, two or more old units of equipment may be traded in or sold and the proceeds thereof applied toward the purchase of a unit of new equipment if, in fact, the one is to be used as a replacement for the old; However, if the old equipment is surplus, the exchange or sale thereof in connection with the purchase of new is not authorized—it being for disposition under the applicable provisions of the Surplus Property Act of 1944."

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5. On the basis of this result, therefore, the practice referred to in 2.a. above should be adjusted to conform with the conclusions reached in the foregoing decision. Where a strong factual presentation has been made that two units may be exchanged for one there would appear to be no legal objection to the trade-in or sale of two or more units of old equipment and the purchase of a single unit of new equipment if the unit of new equipment, in fact, is to be used as a replacement for the two or more units of old equipment. However, as a general practice, it would definitely be opposed to the intent of the statute and the interpretations placed thereon by the General Accounting Office in its decisions constraining the section involved. In this connection, 25 Comp. Gen. 256 is pertinent. Here it was held, quoting from the syllabus:

"Where, in the exchange of equipment under the provisions of section 8 of the administrative expense statute of August 2, 1946, five used cameras are exchanged for a new camera, which camera actually is in replacement of but one of the five old cameras, the difference between the value of the replaced camera and the purchase price of the new one is for charging against the applicable appropriation and for crediting to miscellaneous receipts in accordance with the provisions of the Surplus Property Act of 1944."

6. In this regard some of the language of this decision is interesting and is quoted directly below.

"Ordinarily a new item of equipment is purchased to replace but one item of old equipment. It is only in extraordinary circumstances, when the item of new equipment is so far advanced technically and performs the work so many times more efficiently than the old equipment, that it properly may be said that the new equipment is to take the place of more than one item of old equipment. Accordingly, on the basis of the present record it is to be presumed that the new Recordak camera actually is in replacement of but one of the five old Recordak cameras."

7. The practices referred to in paragraph 2.b. above do not appear to present any real difficulty. In decision B-73347, dated 2 February 1949, the Public Roads Administration requested approval of a procedure, "where old equipment of the Public Roads Administration, used reasonably, is disposed of prior to the issuance of purchase orders for replacement, that the proceeds of sale be credited to the Receipt account, #806690 Deposits, Proceeds of Sale, motor propelled vehicles, etc., 1949 Federal Works Agency, Public Roads Administration"; that the Schedules of Sell-off actions in such instances indicate that the monies cover proceeds of sale of equipment at the end of the construction season and that administrative determination has been made to purchase similar equipment in the fiscal year and that subsequent accounting documents provide proper cross identification." The Comptroller General ruled that the proceeds of sale of

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Acting Executive

16 June 1950

Legal Staff

Accounting for Automobile Proceeds

25X1A 1. The requirements of Section 8 of P.L. 600 were the subject of a memorandum from this office to the Chief, [redacted] dated 22 April 1949. The questions considered in that memorandum are almost identical with those presented by the Basic memorandum from the Chief, Audit Branch. We have nothing to add to our analysis of the law, although it may be helpful to restate our conclusions.

2. The trade-in or sale of a nonexpendable unit must be reasonably related to the purchase of a substitute from points of time and identity. The transactions of purchase and sale do not have to be simultaneous, nor is a particular sequence in time required. However, the purchase transaction must take place within the fiscal year of the sale. If the purchase is not a replacement of a similar item (and reference to classes of material is not sufficient to establish the relationship), then the article disposed of must be treated as surplus and the proceeds deposited into the Treasury under miscellaneous receipts. Insofar as the establishment of a general fund is concerned, this is permissible only when the proceeds of sale credited to a separate receipt account can be shown on the Schedule of Collections as money covering the sale of equipment for the replacement of which an administrative determination has been made which reflects a dedication of funds to be utilized later in the same fiscal year.

3. We must therefore concur with the conclusions of the Chief, Audit Branch, that the present practice does not comply with the requirements of Section 8 of P.L. 600 and should be revised to conform. However, we also concur in the opinion of the Budget Officer in that the requirements are more or less of a technical accounting nature, and if the net balance of the auto proceeds account at the present time is covered into the Treasury as miscellaneous receipts at the end of fiscal year, there is no prejudice to the interest of the Government, and we are in a tenable position to answer any subsequent criticisms. However, it is recommended that the procedure be modified for future years commencing with the fiscal year 1951.

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Legal Decisions

11. The practice contemplated in paragraph 2.d. above should be harmonized with the statements of paragraph 5 heretofore. Basically, these rulings hold against the deposit of cash received in excess of a tangible allowance into a special receipt account, said cash excess to be made available to purchase additional equipment at a later date. In this connection the conclusions of 27 Comp. Gen. 477-478 and the ultimate findings of 28 Comp. Gen. 256 should be reviewed. The later mentioned decision involved a situation providing that five Recordak cameras were to be used as an exchange allowance on one Recordak camera. The bid received from the contractor specified \$2,400. as the amount of such exchange allowance and apparently fixed \$1,550. as the price of the new camera, thus resulting in an excess exchange allowance of \$850., which amount was received by the Bureau of Census and deposited temporarily in Special Deposits. The agency then inquired whether, if such payment of cash was permissible, the amount of such payment might be deposited into the Special Fund Receipt Account 6690, Proceeds of Sales, Motor Propelled Vehicles, etc., and be made available to purchase additional micro-film equipment from Recordak Corporation, namely micro-film readers, without which a micro-film camera was of no value. The Comptroller General held that not only would it be required that the excess receipt from the proceeds of the sale be deposited and covered into the Treasury of the United States as a miscellaneous receipt but there also would be required to be deposited the difference between the value of the replaced unit and the balance allowed by the contractor toward the purchase price of the new unit.

12. You have also requested that this office furnish you with a clarification of the extent to which Section 8 of Public Law 608 applies to non-expendable equipment. It is apparent that Section 8 not only applies to those items which are specifically mentioned but to those which may logically be related. It should be noted that Section 8 also applies to any other article or item, the exchange of which is authorized by law. Usually this authority would be found in specific agency appropriation acts or in some act of general application to the various Government departments and agencies. In the event that you are confronted with a doubtful case the matter should be referred to this office.

LAWRENCE R. HOUSTON  
General Counsel

cc: Subject  
Chairs  
Legal Liaisons

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